



BEFORE THE
COMPETITION COMMISSION OF PAKISTAN

IN THE MATTER OF
SHOW CAUSE NOTICES ISSUED TO
MEDICAL COLLEGES
FOR DECEPTIVE MARKETING PRACTICES

(F. NO: 153/OFT/MEDINST/CCP/14)

Date(s) of hearing: 04-08-2015, 17-09-2015
09-08-2016, 15-06-2017
21-03-2018

Commission: Ms. Vadiyya S. Khalil *VSK*
Chairperson
Dr. Shahzad Ansar *HA*
Member

Present:

On Special Notice under
Section 53 of Competition Act,
2010:

Mr. Noman A. Farooqi
Chief Prosecutor General

Ms. Sophia Khan
Prosecutor

On behalf of:

M/s Bhattai Medical & Dental College	Barrister Adnan Saboor Rohaila Waqar Warraich, Advocate High Court Zubair Ahmed Bhutto Col (Rtd) Hukam Dad, Dir (Admn)
M/s. Hashmat Medical & Dental College	
M/s. Abbottabad International Medical College	
M/s. Independent Medical College	Malik Qamar Afzal, Advocate Supreme Court Dr. Farah Naz Zaidi M. Naeem Sidqui, Admin Officer
M/s. Azad Jammu & Kashmir Medical College	Prof. Dr. Sarosh Majid Salaria, Principal Prof. M. Zaheer Abbasi, Principal
M/s. Women Medical College	Qazi Ghulam Raqeeb, Admin Officer Muhammad Anwar, Admin Officer
M/s. Pak Crescent Medical & Dental College	Mr. Mehboob Qadir Shah, Secretary Mr. Abid Hussain, Principal Mr. Ali Raza



M/s Mohi-ud-Din Islamic Medical College

Brig (Rtd) Saeed Ali
Mr. Mukhtar Ahmed
Prof Dr. Syed Qalb e Abbas, Principal
Dr. Haider Abbas, VP
Dr. Khalid, Dir (Admn)
Dr. Aslam Ashar, Dean



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ORDER

1. This Order shall dispose of proceedings arising out of Show Cause Notices No. 04/2015 to 11/2015 (hereinafter collectively the '**Show Cause Notices**') issued by the Competition Commission of Pakistan ('**Commission**') to eight (8) private medical and dental institutions in Pakistan (hereinafter collectively the '**Undertakings**'), for *prima facie* violation of Section 10 of the Competition Act, 2010 (the '**Act**').

I. FACTUAL BACKGROUND

A. PARTIES TO THE PROCEEDINGS

2. The Undertakings in these proceedings are as follows:
 - a) M/s. Bhitai Dental & Medical College, Mirpurkhas ("**BDMC**"),
 - b) M/s. Independent Medical College, Faisalabad ("**IMC**"),
M/s. Hashmat Medical and Dental College, Gujrat ("**HMD College**"),
 - d) M/s. Abbottabad International Medical College, Abbottabad ("**AIMCA**"),
 - e) M/s. Azad Jammu and Kashmir Medical College, Muzaffarabad, ("**AJ&K Medical College**"),
 - f) M/s. Women Medical College, Abbottabad ("**WMC**"),
 - g) M/s. Pak Red Crescent Medical & Dental College, Lahore ("**PRC M&D**"), and
 - h) M/s. Mohi-ud-din Islamic Medical College, Mirpur ("**MIMC**").
3. By way of background, it came to the notice of the Commission that a press release was issued by the Pakistan Medical and Dental Council (the '**PMDC**') in the daily Express Tribune on 12th November 2013, wherein PMDC cautioned the public at large in general, and prospective students in particular, against twenty-two (22) private medical and dental colleges in Pakistan which despite either not having sought accreditation with PMDC, or having failed to meet the accreditation criteria, were misleadingly advertising to the



4. The said press release further highlighted the issue of six (6) the medical/ dental colleges having had accreditations temporarily cancelled, following the issuance of warning letters. Essentially, these six colleges, although recognized by PMDC, were restricted from taking admissions for the years 2013-2014.

B. ENQUIRY AND SHOW CAUSE NOTICE:

5. The Commission, in the exercise of its mandate, deemed it appropriate to conduct an enquiry into the matter under Section 37(1) of the Act, and constituted an Enquiry Committee comprising of its officers, tasked with the responsibility of investigating the matter and submitting a report on, *inter alia*, the following issue:

"Whether the marketing/advertising practices of medical colleges/institutes are in prima facie violation of Section 10 (deceptive marketing practices) of the Act."

6. In essence, the Enquiry Committee conducted the investigation as to whether the said medical institutions as quoted in the press release had *prima facie* contravened Section 10 of the Act in the course of admitting students into medical or dental courses for the year 2013-14 by advertising their accreditation with PMDC when the said colleges were either not accredited by PMDC at all, or, alternatively, had had their accreditations temporarily cancelled/ suspended.
7. The observations and conclusions in the Enquiry Report dated 8th June 2015 ("**Enquiry Report**") are as follows:

"Keeping in view the above and the fact that medical education is the bedrock on which high-quality healthcare is built. Therefore, every Medical & Dental College/ Institution intending to establish a medical/dental college must apply for an inspection to the PMDC prior to advertisement for applications of admission in First Year class. The advertisement can only be issued after No Objection Certificate is obtained from PMDC. Whereas, NOC for taking



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admission can only be obtained after going through the complete feasibility report and 1st Inspection by PMDC."

8. Based on the above, the Enquiry Report recommended that Show Cause Notices be issued to nine (9) medical and dental institutions for *prima facie* violation of Section 10 of the Act.
9. Eight Show Cause Notices were however issued, as it was determined, post enquiry, that one of the institutes had not advertised recognition by PMDC itself, and that reference to that institute's recognition by PMDC had been made by a third party. In such circumstances, it was not deemed appropriate to direct the institute in question to answer for the actions of a third party.
10. The relevant portion of the Show Cause Notices as issued is reproduced below:

"7. AND WHEREAS, in terms of the Enquiry Report in general and paragraphs 28 to 33 in particular, PMDC has released names of institutions which are not recognized by it, and of institutions which are recognized but are restricted from taking admissions for the year 2013-2014;

8. AND WHEREAS, in terms of the Enquiry Report in general and paragraphs [33] and [59] in particular, PMDC has not provided you with the necessary endorsement and has restrained you from offering admissions during the year 2013-2014;

9. AND WHEREAS, in terms of the Enquiry Report in general and paragraphs [59] in particular it appears that you, through your website, have represented your recognition by PMDC, and omitted to communicate the restriction on your admissions for the year 2013-2014;

10. AND WHEREAS, in terms of the Enquiry Report in general and paragraph [79] in particular, the unqualified representation on your website gives the impression that you are authorized to take admissions for the year 2013-2014, which prima facie



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amounts to the distribution of false and misleading information that is capable of harming the business interests of another undertaking, which is a deceptive marketing practice in terms of Section 10(2)(a) and constitutes a violation of Section 10(1) of the Act;

11. AND WHEREAS, in terms of the Enquiry Report in general and paragraph [79] in particular, the unqualified representation on your website gives the impression that you are authorized to take admission for the year 2013-2014 which prima facie amounts to dissemination of false and misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the price, character, method or place of production, properties, suitability for use, or quality of goods, which is a deceptive marketing practice in terms of Section 10(2)(b) and constitutes a violation of Section 10 (1) of the Act;"

C. ORAL AND WRITTEN SUBMISSION OF THE UNDERTAKING:

11. The Undertakings were called upon to respond in writing within fourteen days of the date of the receipt of the Show Cause Notices and to appear and place before the Commission facts and materials in support of their contention, in terms of availing the opportunity of being heard either in person or through a duly authorized representative on 4th August 2015. Subsequently, two further hearings were conducted by the Commission in this matter on 17th September 2015 and 9th August, 2016.

12. The institute-wise oral and written submissions of the Undertakings are summarized as follows:

BDMC (First Undertaking):

A. In response to the Show Cause Notice No. 4/2015, BDMC submits that its admission process was completed in November, 2013, and subsequently PMDC issued a surprise inspection letter, whereas the institute had already demanded a comprehensive inspection as per schedule to the Ordinance. For this reason,



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BDMC approached the court and obtained an Order directing PMDC to act in accordance with rules and regulations. PMDC, it is submitted, disregarded the court Order and restrained BDMC from admitting any further students in December 2013. BDMC complied with this direction. Meanwhile, BDMC approached Liaquat University of Medical & Health Sciences, Jamshoro, for the affiliation of students for the four year BDS Session 2013-2014, however the university declined, quoting PMDC's admission stop letter.

- B. Once proceedings were withdrawn from court, PMDC conducted an inspection in January, 2014, after which the inspection team determined that BDMC had sufficient facilities to continue its BDS program. Certain observations of the team were addressed, and a compliance report was sent to PMDC. Students of BDS session 2013-2014 were finally registered, along with thirty eight (38) students that were admitted prior to PMDC's restraining of new admissions. Lastly, BDMC submits that there has been no violation of the Act since the institute has not advertised for admissions after December 2013 when the admission stop letter was received, nor did it admit more students until PMDC allowed the institute to admit students in the 2014-2015 BDS program.

IMC (Second Undertaking):

- C. IMC has not made any submissions in response to Show Cause Notice No. 5/2015. Counsel for IMC did however submit during the hearing that a Civil Petition (No. 1498/2014) was filed before the August Supreme Court of Pakistan, challenging PMDC's letter dated 6th June 2013 restraining IMC from admitting students for the 2013-2014 session. No further submissions have been made by IMC.

HMD College (Third Undertaking):

- D. In its response to Show Cause Notice No. 6/2015, HMD College has submitted that it received a letter from PMDC on 27th November, 2013 wherein HMD



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College was instructed to desist from admitting students, where after no further students were admitted. HMD College had already informed PMDC, on 1st November 2013, regarding the completion of its admission process, when it received the letter from PMDC.

- E. HMD College states that vide Section 36-B (Transitory Provision) of the Pakistan Medical and Dental Council Act, 2012, the Council was dissolved and a caretaker setup was put in place for the transition to a new council. As per a Judgment of the Hon'ble Supreme Court of Pakistan reported as 2013 SCMR 1205, a caretaker setup's first and last concern is to conduct elections for a new council, and it cannot take any major policy decision. The composition of the election committee conducting elections of PMDC was challenged before the Hon'ble Lahore High Court, which has issued an Order directing PMDC to maintain status quo pending final adjudication of the said Petition.
- F. HMD College lastly submits that the Commission should have notified the college during the enquiry stage as it may have been able to assist with relevant facts and materials.

AIMCA (Fourth Undertaking):

- G. Responding to Show Cause Notice No. 7/2015, AIMCA submits that in response to PMDC's letter dated 22nd May 2013 regarding restriction on admissions, the college filed a Writ Petition No. 436A / 2013 dated 29th May, 2013 before the Hon'ble Peshawar High Court, Abbottabad Bench. Pending final disposal of the said Petition, the court issued an interim stay order in favour of AIMCA. PMDC, it is submitted, disregarded the said Order, as a result of which AIMCA filed a Contempt Petition (No. 39A / 2014, dated 9th February 2014) against PMDC. This Contempt Petition, it was submitted, is still pending before the Hon'ble Peshawar High Court.



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H. As the matter is currently *sub judice*, AIMCA submits, it would be inappropriate to respond to the Commission's Show Cause Notice. AIMCA lastly submits that the Commission does not have jurisdiction in this matter, however this contention is not further elaborated upon.

AJ&K Medical College (Fifth Undertaking):

I. AJ&K Medical College submits, in response to Show Cause Notice No. 8/2015, that it had completed its admission process for the 2013-2014 session in December 2013. PMDC wrote to and visited AJ&K Medical College in February 2014, where after the institute was directed to desist from admitting students in the MBBS programme for the 2013-2014 session. AJ&K Medical College submits that this matter was taken up with PMDC, and all deficiencies pointed out were rectified. On the request of the institute, a team from PMDC revisited AJ&K Medical College and allowed admissions for the 2014-2015 session vide letter dated 29th December 2014 and for the 2013-2014 session vide letter dated 6th April, 2015. In view of the above, AJ&K Medical College denies propagating any misleading information.

WMC (Sixth Undertaking):

J. WMC submits, in response to Show Cause Notice No. 9/2015, that following PMDC's admission stop letter, WMC approached the Hon'ble Peshawar High Court, Abbottabad Bench vide Writ Petition No. 369-A/2014. The Court passed an Order dated 3rd July 2014 allowing WMC to continue with its admissions process while restraining PMDC from passing any final order in the matter. WMC states that as it has been allowed by the Court to continue with its admissions process, there can be no possibility of violation of Section 10 of the



PRC M&D (Seventh Undertaking):

K. PRC M&D, in its response to Show Cause Notice No. 10/2015, submits that PMDC's letter, addressed to the University of Health Sciences ("UHS"), wherein UHS was informed of PMDC's restraining of PRC M&D from admitting students for the 2013-2014 session, was assailed in Writ Petition No. 11568/2013 before the Hon'ble Lahore High Court, wherein vide Order dated 11th August 2014, the Hon'ble Court allowed PRC M&D to admit students that had passed its entry test conducted in October, 2014, pending final disposal of the Petition. The Court order remained intact up till the 15th of July, 2015, when the Petition was disposed off, envisaging the continuation of PRC M&D's functions till a comprehensive inspection stipulated in Medical and Dental Institutions (Recognition, Eligibility Criteria for Enhancement in Annual Admissions and Accreditation Standards) Regulations, 2012, is conducted. It is submitted that the comprehensive inspection is still pending.

L. PMDC, it is stated, has deliberately suppressed the fact that the original recognition granted to PRC M&D by PMDC vide letter dated 27th December 2011 still holds ground due to the effect of the judgment of the Hon'ble Lahore High Court in the above mentioned Petition. For this reason, it is submitted, the advertisement for admissions for MBBS 1st year programme published in 2014 is fully covered under the order of the Court.

12. In summary, the submissions in response to the Show Cause Notices issued to the Undertakings make one or more of the following arguments:

A. The admission process had already been underway, or even completed, when PMDC restrained the institutes from admitting any further students. No further students were admitted after the said direction.

B. At the time that letters restraining institutes from admitting any further students were issued by PMDC, it was being run under a caretaker setup that had the sole



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mandate to conduct elections in order to set up a new council. This caretaker setup could not take any major policy decisions.

C. Stay orders directing that status quo be maintained had been obtained from the High Courts of relevant jurisdictions, whereby PMDC had been restrained from passing any final order and institutes had been allowed to admit students pending final disposal of those petitions.

D. Furthermore, PMDC in its letter dated 28th July 2018 addressed to the Commission provided updated details of the of the Undertakings accreditation status and student registration data as received by its registration division.

II. ISSUES

13. In view of the submissions made by the parities in the subject proceedings, the Commission deems it appropriate that the following issue merits deliberation:

Whether the Undertakings have engaged in deceptive marketing practices in contravention of clause (a) and (b) of subsection 2 read with subsection (1) of Section 10 of the Act?

III. ANALYSIS AND DELIBERATION

14. Before addressing the legal and factual deliberation of the issue framed in these proceedings, we consider it appropriate to address certain preliminary objections, some of which have been taken by the Undertakings in this matter.

15. The Third Undertaking, HMD College, cites Section 36-B (*Transitory Provision*) of the Pakistan Medical and Dental Council Act, 2012 and a judgment of the August Supreme Court of Pakistan, while submitting that a caretaker setup of PMDC cannot take major policy decisions, and its only concern is to conduct elections for a new council. This submission is deemed irrelevant to the case at hand, as the Commission is currently tasked



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with investigating matters of deception in advertising adopted by an undertaking. In any case, administrative matters relating to the functioning of an organization (public or private) are outside the scope of the Commissions mandate.

16. The Fourth Undertaking, AIMCA, has submitted that this matter is outside the jurisdiction of this Commission. AIMCA does not, however, elaborate on this contention any further. However, to address this submission, in brief it is reiterated that the provisions of the Act in general and Section 10 in particular entrust the Commission with the mandate of initiating proceedings and imposing penalties for contraventions caused by engagement in deceptive marketing practices within Pakistan. Therefore, this matter is squarely within the purview of the Act, and therefore within the jurisdiction of the Commission.

17. We also deem it relevant to clarify at this preliminary stage that the issue of whether the Undertakings in fact accepted admissions for the 2013-2014 session despite being issued directives by PMDC to desist from admitting students and hence acting in disregard of such directions of the sector regulator (PMDC) is outside the scope of these proceedings. What needs to be investigated and adjudicated upon in this matter is whether the Undertakings continued to advertise recognition by PMDC following instructions to cease admissions, thereby deceiving the public to the contrary. For this reason, the focus of this Order will be restricted to the fact of actual advertisement, by the Undertakings, following PMDC's instructions to stop admitting students. Any sanction applicable on the Undertakings for disregarding PMDC's instructions remains outside the ambit of this Order.

18. Lastly, it is brought on record that the Eight Undertaking, MIMC, to whom a Show Cause Notice was issued, proceeded to obtain a stay order preventing the Commission from proceeding against it, and is not, therefore, subject to this Order.

19. Moving onto the issue framed above, we consider it appropriate to highlight and expound upon the scope and objective of applicable provisions of Section 10 of the Act, which reads as follows, before proceeding with a factual analysis thereof:



"10. **Deceptive marketing practices.** (1) No undertaking shall enter into deceptive marketing practices.

(2) The deceptive marketing practices shall be deemed to have been resorted to or continued if an Undertaking resorts to-

(a) the distribution of false or misleading information that is capable of harming the business interests of another undertaking;

(b) the distribution of false or misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the price, character, method or place of production, properties suitability for use, or quality of goods;"

20. At the outset, we note that the Act applies to all "undertakings"; entities which are in anyway engaged, directly or indirectly, in the production, supply, distribution of goods or provision or control of services in Pakistan in pursuance of Section 2(1)(q) of the Act. Furthermore, the provisions of Section 10 of the Act mandate the Commission to eliminate all causes of consumer deception or deceptive marketing practices resorted to by undertakings as defined in Section 2(1)(q) of the Act.

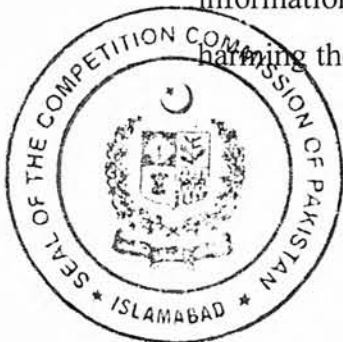
21. The Commission, in one of its recent **Order dated 10th December 2018 in the matter of Show Cause Notice issued to M/s Options Int'l (SMC-Pvt.) Ltd.**, has summarized the application of Section 10 vis-à-vis "deception", by observing that "*for deception to occur, there must be a representation, omission or practice (collectively, the "practices") that is likely to confuse or mislead the consumers in a material respect acting reasonably in the circumstances. In general, "reasonableness" is examined from the perspective of the ordinary consumer of the target group, reference and reliance in this regard is placed on In the matter of Show Cause Notices issued to China Mobile Pak Limited and Messrs Pakistan Telecom Mobile Limited, 2010 CLD 1478. Regarding the concept of "material information" reference is made to the Cliffdale Associates, Inc., 103 FTC 110 (1984), wherein it has been held that "[W]hen the first contact between a seller and a buyer occurs through a deceptive practice, the law may be violated even if the truth is subsequently known to the purchaser" [p. 42]. Thus, a marketing practice is "material" that is likely to*



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affect the conduct of consumers in terms of their purchasing decisions. In this context, we note that advertising statements, disclosures, disclaimers or point of sale representations, inter alia, are the points where consumer first contact between a seller and buyers occurs. if there is the likelihood of consumer deception because it is presumed that the consumer might have chosen differently or made a different purchasing decision, but for deception. Whether a consumer buys a product is immaterial. The provisions of Section 10 of the Act may still be violated.”

22. With specific regard to the interpretation of Section 10(2)(b) of the Act, any form of advertising or marketing that lacks a reasonable basis or prior substantiation is interpreted as being deceptive. The concept of reasonable basis is based on the presumption that the advertised claims, expressly or impliedly, have ascertainable and substantive grounds for the claims. Where the advertiser fails to show a reasonable basis or prior substantiation for the claims, the consumer is believed to be acting under a false or misleading representation.
23. In terms of Section 10(2)(a) of the Act, it has been established by the Commission time and again that actual harm to a competitors business interest need not be established to make out a violation, as the very presence of a deceptive marketing practice that has the potential to cause harm to the competitor’s business is in fact sufficient to hold an undertaking culpable.
24. With respect to the term “business interest” as provided for in Section 10(2)(a) of the Act, we highlight the importance of recognizing that any business’ identity is the goodwill it has established with consumers, while part of a product’s (good or service) identity is the reputation it has earned for quality and value. Furthermore, in the event that there exists a contravention of Section 10(2)(b) of the Act by an undertaking, a concurrent violation of Section 10(2)(a) of the Act is also made out as the distribution of false or misleading information to consumers that lacks a reasonable basis is presumed to be capable of harming the business interest of its competitors.



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25. Based on the above elucidation and interpretation of Section 10(2)(a) and Section 10(2)(b) of the Act, we will now proceed to factually determine, whether the Undertakings, being service providers in the education industry have in fact engaged in deceptive marketing practices, through advertising the offering of admissions during the year 2013-2014 to prospective students (the “**target group/ targeted audience**”) while “*omitting*” to communicate the admission restriction imposed on them by PMDC and providing misleading and incomplete information as to their up-to-date accreditation status with PMDC on their website.

26. An Undertaking wise analysis of the Issue framed in this matter is as follows:

BDMC (First Undertaking):

27. BDMC submits that it had already completed its admissions process prior to receiving instructions from PMDC to cease admissions and that once such instructions were issued on 13th December 2013, the institute stopped advertising for admissions until being allowed to do so by PMDC for the 2014-2015 session.

28. The Enquiry Report in its annexed evidence contains a screenshot of the First Undertaking’s website wherein it is abundantly clear that BDMC is advertising its recognition by PMDC. The issue at hand, as identified is whether the act of advertising recognition or accreditation by PMDC after receiving instructions to desist from admitting students amounts to deception under provisions of Section 10 of the Act. The aforementioned evidence annexed with the Enquiry Report shows that BDMC's advertisement, on its website, was online as on 14th May, 2014. As per the record provided to the Commission by PMDC, students for the year 2013-2014 were registered in January 2014. This information reflects PMDC’s willingness to register students admitted to BDMC. However, such students were only allowed admissions on 18th June 2015. Therefore, since the advertisement was present on the website of BDMC on 14th May 2014, after PMDC had issued instructions to cease admissions on 13th December 2013, it amounts to misleading information lacking a reasonable basis and hence also capable of harming



the business interests of other undertakings in terms of Section 10(2)(a) and Section 10(2)(b) of the Act.

IMC (Second Undertaking):

29. IMC has not made any submissions in response to the Enquiry Report or during subsequent hearings. The only submission made is in the form of a Constitutional Petition No. 1498/2014, filed before the Hon'ble Supreme Court of Pakistan challenging PMDC's letter wherein IMC was restrained from admitting students for the 2013-2014 session. This Commission, however, has not been impleaded in the above mentioned petition, and therefore can adjudicate on the matter of whether this institute has breached provisions of Section 10 of the Act.
30. The Enquiry Report, at Paragraph 45, states that the website of the college also revealed that the college is "*recognized by PMDC, under Section 11 of the PMDC Ordinance.*" Annexed with the Enquiry Report is evidence in the form of a print out of IMC's website, wherein it is clear that the institute is advertising its recognition by PMDC. The date of this advertisement on IMC's website, however, is unclear from the annexed evidence.
31. Further, the Enquiry Report states at Paragraph 47 that the "*website doesn't contain any information about the admission openings during 2013-2014. But the telephonic enquiry reveals that they took admissions during 2013-2014.*" Records and details of this telephonic enquiry have not been made a part of the Enquiry Report for evidentiary purposes.
32. It is clear from the contents of the Constitutional Petition filed before the August Supreme Court of Pakistan that PMDC issued a letter dated 6th June 2013 wherein it directed IMC to cease further admissions for the 2013-2014 session.
33. Whether IMC's advertisement continued after 6th June 2013 is unclear from the evidence annexed with the Enquiry Report, the date of advertisement being of essence in this matter. Furthermore PMDC communicated to the Commission that in the year 2013-2014 no students applied on behalf of IMC to PMDC for registration. In line with these facts and



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the deficiency in terms of lack of clarity as to the timing of the actual advertisement, we do not consider it appropriate to make a determination of violation of Section 10 of the Act.

HMD College (Third Undertaking):

34. HMD College submits that it had already informed PMDC of the completion of its admissions process on 1st of November 2013 and subsequently received instructions from PMDC to stop admitting students on the 27th of November, 2013, where after no further students were admitted.
35. The Enquiry Report contains annexed evidence in the form of a screenshot of HMD College's website as well as print outs from the website. It is clear from the annexed evidence that HMD College has advertised itself as recognized by PMDC. Whether HMD College advertised itself as recognized by PMDC after the 27th of November, 2013, when PMDC instructed HMD College to desist from admitting students, is however unclear from the evidence available in this matter.
36. The presence of undated evidence against HMD College coupled with PMDC's representation that no students applied for registration throughout the relevant period, leads us to the conclusion that no case against this Undertaking can be made out under Section 10 of the Act.

AIMCA (Fourth Undertaking):

37. AIMCA has submitted that it has challenged PMDC's letter dated 22nd May 2013, directing the institute to cease admissions for the 2013-2014 session before the Hon'ble Peshawar High Court, Abbottabad Bench. An interim order has been issued in favour of AIMCA pending final disposal of the petition. A contempt petition has also been referred to, filed against PMDC for disregarding the Hon'ble Court's directions. AIMCA has submitted that as the matter is *sub judice*, it would be inappropriate to respond to the Commission's Show



38. The Enquiry Report states that the website of AIMCA represents the institute's recognition with PMDC, and evidence to this effect is annexed in the form of a print out of the institute's website, as well as a newspaper advertisement. From the print out of the website, it is evident that AIMCA claims to be recognized by PMDC. Keeping in view the scope of this Order, we will examine whether AIMCA continued to claim, on its website, its recognition by PMDC following 22nd of May 2013, the date on which PMDC instructed this institute to cease admissions in its 2013-2014 session. Both items in evidence annexed with the Enquiry Report, i.e., the website print out and the newspaper advertisement, are unfortunately undated. Therefore, we cannot make a conclusive determination of a violation in terms of Section 10 of the Act.

39. Even otherwise, we observe that the print out of the website annexed as evidence to the Enquiry Report, shows that it was hacked on 1st of January 2015. Therefore the content of the website is clearly unreliable.

AJ&K Medical College (Fifth Undertaking):

40. At the outset, we consider it vital to highlight that AJ & K Medical College is located in Muzaffarabad. Azad Jammu and Kashmir. Section 1(2) of the Act stipulates that the statute applies to whole of Pakistan, whereas under Article 1 of the Constitution of the Islamic Republic of Pakistan 1973 (hereinafter the '**Constitution**'), the territory of Pakistan does not include Azad Jammu and Kashmir. Hence, even though the Enquiry Report annexes a dated screenshot of the advertisement made by this college which post-dates the direction of PMDC, it is deemed unnecessary to further dissect the allegations against it, as it falls squarely outside the jurisdiction of the Commission.

WMC (Sixth Undertaking):

41. The Enquiry Report states that WMC's website claims that the institute is recognized by PMDC. The annexed evidence, in the form of a print out of WMC's website, and a screenshot of WMC's advertisement for 2013 admissions, clearly shows that the institute



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indeed claimed to be recognized by PMDC. The issue, however, is whether WMC continued to advertise its recognition by PMDC after 19th June 2013, when PMDC instructed WMC to cease admissions to the 2013-2014 session. Evidence annexed with the Enquiry Report shows that WMC advertised the last date to apply for the 2013-2014 session as 28th September 2013, and that it would hold aptitude tests from 7th to 12th of October 2013. Clearly, WMC's advertisement, as well as the information on its website, is in breach of PMDC's instructions of 19th June 2013 to cease admissions for the 2013-2014 session.

42. WMC submits that it has challenged PMDC's letter dated 19th June 2013, directing the institute to desist from admitting students for the 2013-2014 session before the Hon'ble Peshawar High Court, Abbottabad Bench. The Hon'ble Court, it is submitted, allowed WMC to continue with its admissions process and restrained PMDC from passing any final order in the matter. As it has been allowed by the Court to continue with its admissions process, there can be no matter of deception, WMC states.

43. However, PMDC's position is that WMC was allowed to proceed with admissions from 28th December 2015 and that 100 out of the 105 students (from the stop admission year of 2013-2014), were subsequently registered with PMDC.

44. The case before this Commission remains whether WMC deceptively advertised itself as being recognized by PMDC at a time that such recognition had been withdrawn or suspended, in breach of provisions of Section 10 of the Act. We note that while WMC was allowed to continue with its admissions process by the Honorable Peshawar High Court, Abbottabad Bench vide Court Order dated 3rd July 2014, it was however advertising that the last date of admissions was 28th of September 2013, in defiance of PMDC's instructions to desist from admissions issued on 19th June, 2013. Therefore, during the period that WMC was advertising for admissions, there was no Court Order allowing them to do so, in the field. Therefore, we are of the considered opinion that this Undertaking has acted in violation of Section 10(2)(a) and Section 10(2)(b) of the Act, having disseminated misleading information to consumers.



PRC M&D (Seventh Undertaking):

45. PRC M&D has submitted that PMDC's letter addressed to UHS, wherein UHS was informed of PMDC's restraining of PRC M&D from admitting students for the 2013-2014 session was dated 26th April 2013. Whereas, PMDC in its correspondence with the Commission has disclosed that the stop admission letter was sent to the Undertaking on 13th June 2013. The Undertaking further submits that the Hon'ble Lahore High Court, allowed it to admit students that had passed its entry test conducted in October 2014, pending final disposal of the petition. This petition was disposed off on 15th of July 2015, envisaging the continuation of PRC M&D's functions until a comprehensive inspection was conducted. This inspection, it is submitted, is still pending. The advertisement for admissions for MBBS 1st year program, published in 2014, is therefore fully covered under the Order of the Court, it is submitted.

46. The Enquiry Report states that PRC M&D's website claims recognition by PMDC, annexing evidence in the form of a screenshot of the Undertaking's website as well as a print out of PRC M&D's admission notice as it appeared in newspapers, which clearly shows that the institute indeed claimed to be recognized by PMDC. The screenshot of PRC M&D's website also contains a notice of new admissions for the MBBS Part-1 2013-2014 session.

47. In order to make a finding of deception in advertising in this regard, it is important to consider whether PRC M&D continued to advertise its recognition by PMDC following instructions to cease admissions for the 2013-2014 session. The submissions by PRC M&D, both written and during subsequent hearings, do not establish clearly the date that PMDC issued directives to PRC M&D to stop its admissions process. It is clear from the submissions that UHS was informed of PRC M&D's status *vis* PMDC recognition *vide* letter dated 26th April 2013, which was challenged by PRC M&D before the Hon'ble

Lahore High Court.



48. In light of this deficiency, it is reasonable to assume that PRC M&D was directed by PMDC to cease admissions prior to PMDC's communication to UHS of the same, but in any case positively by 26th April, 2013, when it was communicated to UHS. Evidence annexed to the Enquiry Report shows that the advertisement, wherein PRC M&D stated that it "*is starting a new admissions process for MBBS part 1 2013-2014 very soon*" was online on its website as on 14th May, 2014. It is clear from the date of the advertisement that this was in breach of PMDC's instructions to cease admissions.

49. As for the Order of the Hon'ble Lahore High Court which saw fit to allow this institute to admit students that had passed its entry test conducted in October 2014, pending final disposal of the petition, we note that it is dated 11th August 2014, whereas PRC M&D advertised for admissions up to at least the 14th May 2014, when the evidence annexed with the Enquiry Report was recorded. The Court decision was endorsed by the PMDC and an inspection was carried out on 18th April 2016. It is observed that there was no Court Order allowing PRC M&D to admit students for the 2013-2014 session in the field at the time that PRC M&D was advertising for admissions in defiance of PMDC's instructions. Also despite PMDC's stop admission notice, 100 students applied for registration on behalf of the Undertaking in 2013-2014 and were not registered. This reflects loss suffered by the candidates. Therefore, we conclude that the Undertaking has acted in violation of Section 10(2)(a) and Section 10(2)(b) of the Act through the dissemination to the targeted audience (students) of false and misleading information, luring them into a position where they in fact suffered a loss.

50. Upon a conclusion of the above legal and factual analysis, we find that there is sufficient evidence on record in this matter to hold that BMDC (the First Undertaking), WMC (the Sixth Undertaking) and PRC M&D (the Seventh Undertaking) have resorted to deceptive marketing practices in contravention of Section 10 of the Act, specifically Section 10(2)(a) and Section 10(2)(b) thereof.



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IV. REMEDIES AND DIRECTIONS

51. Before addressing this section of the Order, we would like to highlight the importance of quality medical care, the prerequisite of which is quality medical education for our youth. There can be no question as to the impetus and relevance of quality education in the various fields of medicine for any nation, be it the developed work or a developing country such as Pakistan. The vision of a prosperous Pakistan demands a healthy citizenry, safe in the knowledge that their health concerns will be addressed and their medical needs met. The Constitution of the Islamic Republic of Pakistan, 1973 declares that the state shall provide basic necessities of life, including medical relief, for all such citizens who are temporarily or permanently unable to earn their livelihood on account of infirmity, sickness or unemployment¹.

52. The August Supreme Court of Pakistan in its recent Judgment titled **Hashmat Medical and Dental College vs. Pakistan Medical and Dental Council**, reported as **2018 SCMR 1310** has laid down a precedent that stands as a policy for private medical colleges in Pakistan and their relationship with the PMDC. This judgment has highlighted an obligation on PMDC to ensure that medical education is strictly regulated through implementing measures to reach and maintain quality education. It was observed by the Apex Court that the prerequisites for a medical college to function and obtain authorization from PMDC in this regard, are quality equipment, infrastructure, paraphernalia, infrastructure faculty, support staff and affiliation with fully functional hospitals. The Apex Court has stressed on the need to resist medical colleges as a tool to generate economic benefits and commercial success by investors who have little regards for the benefit of the students or medical care as a whole. More specifically the August Court in relation to the lack of adherence to and maintenance of the required standards of education has observed as follows:



as follows: 



“The above state of affairs is a sad commentary on the state of medical education being imparted by non-professional, unethical and unscrupulous elements whose sole purpose is generation of money at the cost of poor students whose parents pay huge sums of money as fees/donations to fulfill their dream of getting a good medical education for their children. Having examined the ground realities and landscape of medical education in the private sector prevailing in the country we are of the firm view that medical education needs strict and stringent regulation and monitoring by the PM&DC. It must be ensured that only those medical educational institutions which have all requisite facilities, equipment, paraphernalia, infrastructure, faculty and support staff together with affiliation with genuinely operating and functional hospitals are allowed to function. And fake colleges which have been set up by unscrupulous and unprofessional commercial investors who consider this to be a convenient avenue to multiply their investment are weeded out firmly, quickly and permanently. Any institution that fails to meet the requirements and fulfill the standards set by PM&DC, after being given reasonable time to make up the deficiencies needs to be shutdown with its registration cancelled and affiliation withdrawn.”

53. The August Supreme Court in the aforementioned judgment directed that PMDC must after a reasonable period withdraw a medical institution’s affiliation by cancelling its registration if it fails to meet the standard set. The Apex Court further directed PMDC to ensure that if a particular college is no longer recognized by and registered with PMDC, this information must be out in the open in the electronic and print media with adequate prominence for the knowledge of the public at large as it would act as a mechanism to spread awareness of the withdrawal of authorization by PMDC. The obligation on PMDC was imposed to ensure that the public is made well aware as to which medical and dental colleges are not authorized to grant admission or impart education.

54. We are also unanimous in our belief that the obligations imposed on PMDC by the Apex Court will discourage deceptive marketing practices from being resorted to by medical and



dental colleges operating in Pakistan by preventing the spreading of false and misleading information to the public. This mechanism for publication of reaccreditation by PMDC will put prospective medical students on notice as to the accurate accreditation status of an institute, coming directly from the horse's mouth as against any misinformation disseminated to them by an institute whose purpose may be to lure in students deceptively.

55. Notwithstanding the above observation, we are also firm in our belief that there exists a fair share of teaching institutes in this vastly important field, who have been imparting high quality education, and continue to equip our youth with the tools that they will require in ensuring not only their own future and economic wellbeing, but also the good health and medical welfare of approximately 193 million citizens in Pakistan. Universities and colleges have always been a pillar for a flourishing nation, but none more so than those in the fields of medicine, due to its importance in the welfare of society.

56. We note that the Enquiry Report mentions statistics for Pakistan on the ratio of doctors per one thousand patients that are alarming at best. There are 3.5 doctors for every 1000 patients in Europe, whereas this ratio drops to 1.3 doctors for every thousand patients in third world countries. Pakistan's ratio is even lower than that, at 0.7 doctors per 1000 patients². The recommended doctor/population ratio for a country such as Pakistan, as determined by the World Health Organization, is one doctor for every thousand patients.

57. The Enquiry Report also tritely points out that institutes that advertise programs in medicine and dentistry without the proper approval of their regulator are capable of benefiting from the lack of awareness that prospective students might have about PMDC's functions and the value of its accreditation or recognition of a particular institute.

58. Not only is this potentially disastrous for the future of those students, but unrecognized institutes that continue to teach students may well fall below the teaching standards that are required to be maintained, playing havoc with the lives of potential patients that may



Paragraph IV of the Enquiry Report.

seek healthcare services from under qualified doctors that received their education from institutes unrecognized by PMDC.

59. We are mindful of the role of PMDC, which is principally mandated to setting national standards for medical education, keeping a register of medical practitioners and accrediting medical colleges keeping in view the quality of facilities, numbers of teachers and other terms and conditions as provided for under the PMDC laws and rules and regulations framed thereunder. Undoubtedly, a significant part of the overall functioning of Pakistan's healthcare system, PMDC continues to play an indispensable role in Pakistan's future.

60. The accreditation and recognition system that has been put in place by PMDC is essential in ensuring high quality education and to safeguard the careers and futures of countless students. In this regard we are committed to ensuring that no medical institute breaches provisions of Section 10 of the Act by way of advertising recognition or accreditation by PMDC when in fact it does not have the necessary endorsement.

61. In view of the above, the enquiry in this matter was undertaken with the hopes that a difference may be made in the lives of thousands of students enrolled in medical and related courses in the short term, and the lives of millions of citizens in the long run. The Commission viewed this enquiry not as just the exercise of its mandate to protect consumers from anti-competitive behavior, but also as an investment in Pakistan's good fortune.

62. That being said, the legal and factual issue before us for the purposes of this Order, was whether any medical or dental institute advertised, or continued to advertise, its recognition by PMDC following PMDC's instructions to cease admissions, thereby indulging in deceptive marketing, in violation of provisions of Section 10 of the Act. With this in mind, the entire case turned on the timing of advertisements as they appeared either online on the institutes' websites, or alternatively in print media.

63. If an institute advertised its recognition by PMDC prior to the latter's suspension or cancelling of that recognition, there can be no question of deception. Only if an institute

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advertised itself as recognized by PMDC following the cancelling or suspension of that recognition by PMDC could the advertisement be termed the distribution of false or misleading information, in breach of Section 10(2)(a) and Section 10(2)(b) of the Act.

64. In view of the conclusion drawn by us at Paragraph 51 of this Order, we hold that a case of deceptive marketing in violation of Section 10 of the Act has been made against three Undertakings, namely BDMC, WMC and PRC M&D. As stated above, the entire case turns on the timing of advertisements as they were appeared on websites or print media. There is sufficient evidence to prove that these three institutes had advertised admissions for the 2013-2014 session despite, PMDC's instructions to these institutes wherein they were directed to cease admissions for the session in question based on their questionable and unconfirmed recognition status.

65. Accordingly, and in view of the blatant violation of Section 10 of the Act by these Undertakings, we are constrained to impose a penalty of **PKR 7,500,000/- (Rupees Seven Million and Five Hundred Thousand Only)** each on **BDMC (First Undertaking), WMC (Sixth Undertaking) and PRC M&D (Seventh Undertaking)**. This amount shall be deposited with the Registrar of the Commission within sixty (60) days from the date of receipt of this Order.

66. While the Enquiry Report recommends action against all Undertakings that were within the scope of its investigation, we deem that the evidence against all the remaining institutes, save the evidence regarding BDMC, WMC and PRC M&D, inadequate as it, is either undated or unreliable to make out a violation of Section 10 of the Act. Therefore, no penalty is imposed on the remaining Undertakings: IMC, HMD College, AIMCA, AJ&K Medical College.

67. This further increases the need for certain guidelines to be set for the Enquiry Officers of the Commission with regard to collection and preservation of evidence. Any enquiry on telephone must be recorded and a transcript containing the duration of the call, minutes and



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content must be made. Call record in the telephone bill may also serve as evidence to support the fact that the call was indeed made.

68. Furthermore, we also observe that verbal information and verbal proceedings have no sanctity in law. Oral orders and oral enquiries are alien to the process of law. Therefore, mere verbal information lacks weightage to stand as evidence, in this regard we are guided by the judgment titled **Ahmad Nawaz vs. the State**, reported as **PLD 1998 Karachi 180**.

69. The Enquiry Committee of the Commission must follow a proper mechanism for collection of electronic evidence. Any evidence may lose its credibility if it is not collected in the correct form. Furthermore, important features such as date must be displayed especially if it is of crucial importance to the allegations and the case at hand, in this regard we are guided by the judgment titled **Shamim Akhter vs. Standard Chartered Bank Limited**, reported as **2014 CLD 1034**. At the same time it must be noted that this direction is not to say that electronic evidence is not reliable under the law. In light of the judgment titled **Alamgir Khalid Chughtai vs. the State**, reported as **PLD 2009 Lahore 254**, electronic form of evidence in the form of documents, record, information, communication or transaction are very much legally recognized. Their validity cannot be rebutted based on electronic form or lack of attestation by any witness.

70. It is also crucial to point out and direct the Enquiry Committee of the Commission to ensure that the undertaking against whom an investigation is being carried out must fall within the ambit and scope of the application of the Act. Section 1(2) of the Act provides that Act applies to whole of Pakistan whereas under Article 1 of the Constitution of the Islamic Republic of Pakistan, 1973, the territory of Pakistan does not include Azad Jammu and Kashmir. Therefore, an Undertaking that is engaged in economic or commercial activity outside the territory of Pakistan does not fall within the scope of the application of the Act.

71. Lastly, it is reiterated that while a case in this matter has only been made out against three of the seven Undertakings, the remaining undertakings are strongly cautioned against





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advertising their recognition by PMDC when that recognition is either suspended, or has been cancelled. In cases where PMDC's recognition has been temporarily suspended pending rectification of deficiencies, the fact of temporary suspension must accompany any claim of recognition made. It must be appreciated that such steps will not only increase transparency regarding admissions for students and parents, but will also ensure that institutions do not, by their actions or omissions, attract penalties for breach of provisions of Section 10 of the Act or any other provision thereof. In terms of actual financial or other loss (missed career opportunities) suffered by students due to the conduct of the Undertakings, it is observed that the proper course of action would be to seek competition before the appropriate court of competent jurisdiction as this Commission is only entrusted with reprimanding and penalizing undertakings for violating the provisions of the Act and further directing them to refrain from future potential contraventions.

72. The Office of the Registrar of the Commission is further directed to send copies of this Order to all the Undertakings and PMDC for record and compliance under the provisions of the Act and the Rules and Regulations promulgated thereunder.

73. In terms of the above, Show Cause Notices No. 04/2015 to 11/2015 are hereby disposed of.


Vadiyya S. Khalil
Chairperson


Dr. Shahzad Ansar
Member



ISLAMABAD THE 26th DAY OF MARCH, 2019